

Before the  
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554 RECEIVED

SEP 9 1996

FCC MAIL ROOM

In the Matter of )

)  
Amendment of Section 73.202(b)  
Table of Allotments,  
FM Broadcast Stations  
(Raton, New Mexico)

)  
)  
) MM Docket \_\_\_\_\_  
) RM - \_\_\_\_\_  
)

DOCKET FILE COPY ORIGINAL

To: The Chief, Allocations Branch

**PETITION FOR RULE MAKING**

Comes now N'JOY BROADCASTING (hereafter "N'Joy"), pursuant to Section 1.401 of the Commission's Rules, and respectfully petitions the Commission to amend the FM Table of Allotments, 47 C.F.R. 73.202(b), to allocate FM Channel 249A to Raton, New Mexico, as that community's third local FM service. N'Joy also seeks to amend its pending application (File No. BPH-960124MA), to specify the alternate channel.

**Proposal of Petitioner:**

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<u>City</u>	<u>Channel Numbers</u>	
	<u>Present</u>	<u>Proposed</u>
Raton, New Mexico	229C2, 243A	229C2, 243A, 249A

  
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024  
MMB

## BACKGROUND

N'Joy previously petitioned the Commission to add Channel 243A to Raton, New Mexico, as that community's second local FM channel (MM Docket No. 95-114). In the *Report and Order* released November 8, 1995, a filing window opening on December 26, 1995, and closing on January 26, 1996, was specified.

Although N'Joy filed an application for Channel 243A, a competing application for the same channel was filed by David F. Phillips (File No. BPH-960126MB). Neither application can be granted because the Commission has no current basis upon which to designate the applications for a comparative hearing or to otherwise resolve the mutual exclusivity. 1/

In order to resolve the conflict between the two applications, N'Joy has identified an alternate channel, FM Channel 249A, which could be allocated to Raton at the site specified in N'Joy's pending application. N'Joy requests that the alternate channel be allocated to Raton and that N'Joy be permitted the opportunity to amend its

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1/ See *Bechtel vs Federal Communications Commission*, 10 FCC Rcd 875 (74 RR 2d 348) (D.C. Cir. 1993).

pending application (File No. BPH-960124MA) to specify the new channel and that it be afforded cut-off protection, in accordance with prior Commission precedent. 2/

In the event other expressions of interest are filed for a new Class A channel at Raton, New Mexico, Channel 299A is also available for assignment to Raton with a site-restriction approximately 13 kilometers southeast of the community.

Upon assignment of the alternate channel and the amendment of N'Joy's pending application to specify Channel 249A, the Commission would then be able to process and grant both applications, thereby bringing new FM service to Raton in an expeditious manner, and avoiding the need for a long and expensive comparative hearing (if and when new comparative hearing procedures are established).

Attached hereto and made a part of this petition is a Technical Exhibit in support of the requested allotment. Based on the information contained therein, it appears

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2/ See *Albion, Nebraska*, 10 FCC Rcd 11927 (1995); *Lander, Wyoming*, 46 FR 39605, August 4, 1981.

that Channel 249A could be allocated to Raton at the transmitter site specified in N'Joy's pending application, in full compliance with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules.

### CONCLUSION

If this proposal is adopted, N'Joy will amend its pending application to specify Channel 249A. Upon grant of a construction permit for the proposed facility, N'Joy will promptly construct and operate a new FM broadcast station at Raton, New Mexico.

In accordance with Section 1.52 of the Commission's Rules and Regulations, I hereby certify that I have examined the foregoing Petition for Rule Making and the attached Technical Exhibit and that both are true and correct to the best of my knowledge and belief.

WHEREFORE, it is respectfully requested that the instant petition be granted and that the FM Table of Allotments, Section 73.202(b), be amended as requested herein.

Respectfully submitted,

N'JOY BROADCASTING

*Mary Alice Rateau*

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Mary Alice Rateau  
8264 South Cody  
Littleton, CO 80123

By:

CONTEMPORARY COMMUNICATIONS

*Larry G. Fuss*

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Larry G. Fuss, Consultant  
P.O. Box 1787  
Cleveland, MS 38732  
(601) 846-1787

July 31, 1996



# **Contemporary Communications**

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## **TECHNICAL EXHIBIT**

**IN SUPPORT OF  
PETITION FOR RULE MAKING  
ALTERNATE CHANEL FOR BPH-960124MA  
RATON, NEW MEXICO**

**N'JOY BROADCASTING**

**Prepared May 20, 1996**

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## **TECHNICAL EXHIBIT**

**IN SUPPORT OF  
PETITION FOR RULEMAKING  
ALTERNATE CHANNEL FOR BPH-960124MA  
RATON, NEW MEXICO**

**N'JOY BROADCASTING**

## **INTRODUCTION**

This Technical Exhibit supports the petition of N'Joy Broadcasting, seeking to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, by allocating FM Channel 249A to Raton, New Mexico, as that community's third local FM channel. N'Joy also seeks to amend its pending application, File No. BPH-960124MA, to specify the alternate channel, in order to avoid a conflict with the mutually-exclusive application of David F. Phillips (File No. BPH-960126MB).

## **ALLOCATION**

A study was performed using the computerized *SEARCHFM* frequency search program and the current FCC/NTIS database to determine if Channel 249A could be allocated in compliance

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with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules. The study included all applicable co-channel, adjacent-channel and IF separations. The results of that study indicate that Channel 249A may be allocated to Raton at the transmitter site specified in N'Joy's pending application, in full compliance with Section 73.207(b).

The "useable area" for Channel 249A is indicated on Exhibit A, attached hereto. The exhibit depicts the required separation arcs from all pertinent co-channel and adjacent channel stations and allocations. As indicated, Channel 249A may be utilized at the site specified in N'Joy's pending application. Assuming maximum Class A facilities (6 kw @ 100 meters above average terrain, or equivalent), the proposed station would provide adequate city-grade (70 dBu) coverage to the entire city, in full compliance with Section 73.315(a) and (b).



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## **CONCLUSION**

The proposed change in the table of allotments will not create a short-spacing to any existing station, pending application or vacant allotment, and will not require the reallocation of any station, pending application or vacant allotment.

A copy of the separation study for Channel 249A is attached hereto as Exhibit B and made a part of this report (only those stations and channels sufficiently close for concern are noted therein).

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## AFFIDAVIT

State of Mississippi                    }  
County of Bolivar                    } ss.

Larry G. Fuss, being first duly sworn, deposes and states as follows:

- 1) I am a qualified and experienced broadcast consultant. I have been actively involved in the broadcast industry since 1972 and currently hold a lifetime FCC General Class Radio Telephone License (License No. PG-8-8450).
- 2) I have prepared numerous applications and rule making petitions which have been accepted for filing with the Federal Communications Commission.
- 3) I have been retained by N'Joy Broadcasting to prepare the attached Technical Exhibit.
- 4) The Technical Exhibit, of which this deposition is a part, and the measurements, calculations, studies and determinations upon which this report is based, were prepared by me or under my direction. All material contained therein is believed to be true and correct, to the best of my knowledge and belief.

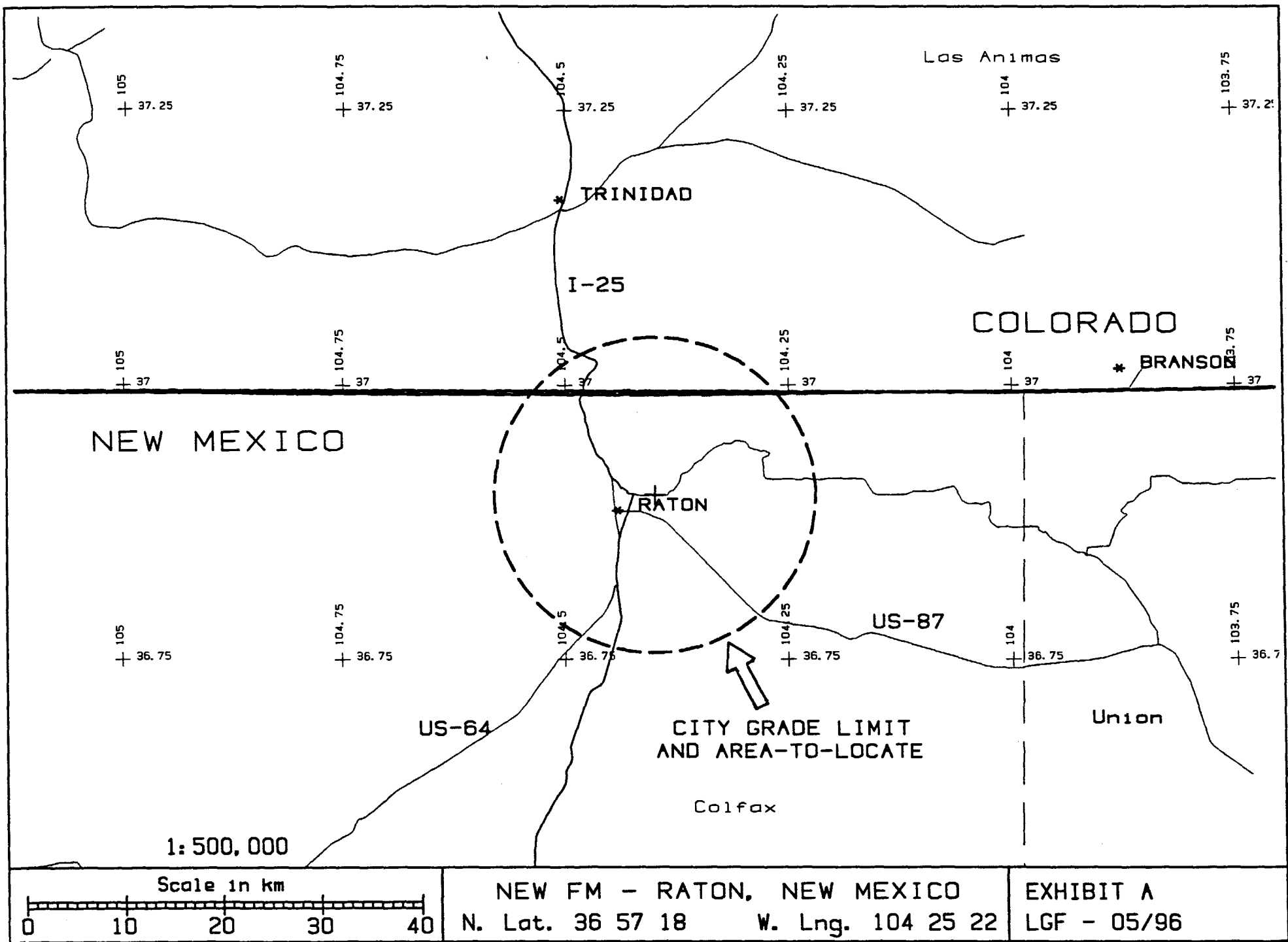
Larry G. Fuss  
Larry G. Fuss  
Affiant

5/20/96  
Date

Subscribed and sworn to before me this 20 day of May, 1996

Cindy C. Alden  
Notary Public

My commission expires:



CONTEMPORARY COMMUNICATIONS  
BROADCAST CONSULTANTS

\*\*\* EXHIBIT B \*\*\*  
RATON NEW MEXICO

REFERENCE  
36 57 18 N  
104 25 22 W

CLASS = A  
Current Spacings

DISPLAY DATES  
DATA 04-26-96  
SEARCH 05-19-96

----- Channel 249 - 97.7 MHz -----

Call	Channel	Location	Dist	Azi	FCC	Margin
N. Lat.	W. Lng.	Power	HAAT			
KBAC	LI 251C	Las Vegas	NM	195.10	206.0	95.0 100.10
35 22 20	105 22 02	CN	100.000 kW	316 M		
QMI KBAC, Inc.			BLH891003KE	960419		
KKFM	LI 251C	Colorado Springs	CO	202.22	349.2	95.0 107.22
38 44 36	104 51 44	CN	71.000 kW	698 M		
Citadel Communications Corpor			BLH940321KC	940811		
KLVO	LI 249C1	Belen	NM	322.44	222.7	200.0 122.44
34 47 55	106 48 59	CN	100.000 kW	262 M		
Guardian Communications, Inc.			BLH950206KD	950502		
KGNCFM	LI 250C	Amarillo	TX	294.82	127.5	165.0 129.82
35 18 52	101 50 47	CY	100.000 kW	391 M		
Stauffer Communications, Inc.			BMLH870116KA	950821		
KKSS	LI 247C	Santa Fe	NM	229.40	235.9	95.0 134.40
35 46 50	106 31 35	CY	100.000 kW	572 M		
New Mexico Broadcasting Compa			BLH850926KA	860213		